

AMENDED IN ASSEMBLY AUGUST 22, 2006

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN SENATE APRIL 25, 2006

SENATE BILL

No. 1340

Introduced by Senator Margett

February 17, 2006

An act to amend Sections 17406 and 17600 of, and to add Section 17421.5 to, the Financial Code, relating to escrow agents.

LEGISLATIVE COUNSEL'S DIGEST

SB 1340, as amended, Margett. Escrow agents.

The Escrow Law provides for licensing and regulation of escrow agents, other than certain exempt persons, by the Commissioner of Corporations. Existing law requires a licensee whose license has been surrendered or revoked to submit a closing audit report to the commissioner within 105 days after the effective date of the surrender or revocation.

This bill would also require that licensee to submit certain ~~unaudited~~ *additional financial statements information* to the commissioner.

Existing law generally provides that surrender of a license becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time as determined by the commissioner.

This bill would instead provide that surrender of a license becomes effective ~~115~~ *105* days after receipt of the application, or within a shorter period of time as determined by the commissioner, except in certain circumstances.

This bill would also authorize a licensee to charge a fee for administering ~~and monitoring of funds held in~~ an escrow that has been postponed or canceled subject to various conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17406 of the Financial Code is
2 amended to read:

3 17406. (a) Each licensee shall submit to the commissioner, at
4 the licensee's own expense, an audit report containing audited
5 financial statements covering the calendar year or, if the licensee
6 has an established fiscal year, then for that fiscal year, within 105
7 days after the close of the calendar or fiscal year, as applicable.
8 At that time, each licensee shall also file additional relevant
9 information that the commissioner may require.

10 (b) Within 30 days after receipt of a request from the
11 commissioner, a licensee or other person subject to this division
12 shall submit to the commissioner, at the person's own expense,
13 an audit report containing audited financial statements covering
14 the 12 calendar months next preceding the month of receipt of
15 the request, or for another period as the commissioner may
16 require. Unless the public interest shall otherwise require, the
17 commissioner shall exempt a licensee from the provisions of
18 subdivision (a) hereof in whole or in part if the licensee has
19 complied with a request pursuant to this subdivision as of a date
20 within the calendar or fiscal year for which the exemption is
21 granted.

22 (c) A licensee whose license has been surrendered or revoked
23 shall submit to the commissioner, at its own expense, ~~its~~
24 ~~unaudited financial statements, prepared in accordance with~~
25 ~~generally accepted accounting principles and consisting of at~~
26 ~~least a balance sheet and statement of income and expense as of~~
27 ~~the date the license is surrendered or revoked, and, on or before~~
28 105 days after the effective date of the surrender or revocation, a
29 closing audit report as of that effective date, or for another period
30 as the commissioner may specify. The report shall include the
31 information specified by the commissioner, *including, but not*
32 *limited to, a bank reconciliation of the trust account and a*

1 *verified statement from a certified public accountant to confirm*
2 *lawful disbursement of funds.* A licensee who has complied with
3 this subdivision is exempted from subdivision (a) of this section.

4 (d) The reports and financial statements referred to in
5 subdivisions (a), ~~(b), and (c)~~ and (b) of this section shall include
6 at least a balance sheet and a statement of income for the year
7 ended on the balance sheet date together with other relevant
8 information as the commissioner may require, ~~and. The reports~~
9 ~~and financial statements referred to in subdivisions (a), (b), and~~
10 ~~(c) of this section~~ shall be prepared in accordance with generally
11 accepted accounting principles, and shall be accompanied by a
12 report, certificate, or opinion of, an independent certified public
13 accountant or independent public accountant. The audits shall be
14 conducted in accordance with generally accepted auditing
15 standards and the rules of the commissioner.

16 (e) A licensee shall make other special reports to the
17 commissioner as the commissioner may from time to time
18 require.

19 (f) For good cause and upon written request, the commissioner
20 may extend the time for compliance with subdivisions (a) and (b)
21 of this section.

22 (g) A licensee shall, when requested by the commissioner,
23 submit its unaudited financial statements, prepared in accordance
24 with generally accepted accounting principles and consisting of
25 at least a balance sheet and statement of income and expense as
26 of the date and for the period specified by the commissioner. The
27 commissioner may require the submission of those reports on a
28 monthly or other periodic basis.

29 (h) If the report, certificate, or opinion of the independent
30 accountant referred to in subdivision (d) hereof is in any way
31 qualified, the commissioner may require the licensee to take
32 action as he or she deems appropriate to permit an independent
33 accountant to remove the qualifications from the report,
34 certificate or opinion.

35 (i) The commissioner may reject any financial statement,
36 report, certificate or opinion by notifying the licensee or other
37 person required to make the filing of its rejection and the cause
38 thereof. Within 30 days after the receipt of the notice, the
39 licensee or other person shall correct the deficiency and the

1 failure so to do shall be deemed a violation of this division. The
2 commissioner shall retain a copy of all filings so rejected.

3 (j) The commissioner may make rules specifying the form and
4 content of the reports and financial statements referred to in this
5 section, and may require that those reports and financial
6 statements be verified by the licensee in the manner as he or she
7 may prescribe.

8 (k) Upon completion of the reports and financial statements
9 referred to in subdivisions (a), (b), and (c), the independent
10 accountant shall submit to the commissioner complete copies of
11 the reports and financial statements at the same time that copies
12 of the reports and financial statements are submitted to the
13 licensee.

14 SEC. 2. Section 17421.5 is added to the Financial Code, to
15 read:

16 17421.5. (a) A licensee may charge a fee for administering
17 ~~and monitoring of funds held in~~ an escrow that has been
18 postponed or canceled beyond the most recent closing date
19 agreed upon by the parties in the written instructions if all of the
20 following are met:

21 (1) The escrow has been postponed for at least two months
22 from the most recent closing date agreed upon by the parties in
23 writing, or has been canceled.

24 (2) ~~The licensee did not cause the postponement or~~
25 ~~cancellation of postponement or cancellation resulted from the~~
26 ~~acts or omissions of the parties to the escrow.~~

27 (3) ~~The licensee is authorized by the written instructions of the~~
28 ~~parties to charge, and deduct from funds on deposit, a monthly or~~
29 ~~fraction thereof hold-open fee, if the fee is disclosed in the~~
30 written instructions and agreed upon by all parties.

31 (b) This section shall apply to an escrow agreement made on
32 and after January 1, 2007.

33 SEC. 3. Section 17600 of the Financial Code is amended to
34 read:

35 17600. (a) An escrow agent's license remains in effect until
36 surrendered, revoked, or suspended.

37 (b) Surrender of a license becomes effective ~~115~~ 105 days
38 after receipt of ~~an a complete~~ application to surrender the license
39 or within a shorter period of time as the commissioner may
40 determine, unless (1) a revocation or suspension proceeding is

1 pending when the application is filed or (2) a proceeding to
2 revoke or suspend or to impose conditions upon the surrender is
3 instituted within 30 days after the application is filed or the
4 closing audit report is received, or (3) the commissioner has by
5 order imposed a longer period of time to receive and review the
6 closing audit report. If a proceeding is pending or instituted,
7 surrender of a license becomes effective at the time and upon
8 those conditions as the commissioner determines.

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